

Appl. No. 10/682,092
Reply to Office Action of May 11, 2007

Amendments to the Drawings:

Sheet 1 of 2 has been amended.

Figure 1 on sheet 1 of 2 has been labelled as "Prior Art".

Attachment: Replacement Sheets
Annotated Sheets Showing Changes

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REMARKS/ARGUMENTS

Status of Claims

Claims 1 to 29 are currently pending in the application.

Amendments to Drawings

Figure 1 has been labelled as Prior Art.

35 U.S.C. § 103(a) Rejections

Courts have interpreted 35 U.S.C. §103(a) as a question of law based upon a review of the underlying facts. As the Federal Circuit stated:

Obviousness is ultimately a determination of law based on underlying determinations of fact. These underlying factual determinations include: (1) the scope and content of the prior art; (2) the level of ordinary skill in the art; (3) the differences between the claimed invention and the prior art; and (4) the extent of any proffered objective indicia of nonobviousness.

Monarch Knitting Mach. Corp. v. Sulzer Morat GmbH, 45 U.S.P.Q.2d 1977, 1981 (Fed.Cir. 1998) (internal citations omitted).

The requirements for establishing a *prima facie* case of obviousness as set out in the MPEP Section 2143.01 include that references when combined teach all of the claimed limitations, that there be a reasonable expectation of success in realizing the claimed invention, and that there be a motivation to combine the references. In view of the recent *KSR Int'l v. Teleflex, Inc.* decision, the requirement that there be a motivation to combine the references has changed somewhat, in that now the Patent Office must identify a reason why a person of ordinary skill in the art would have combined the references.

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Claims 1 to 8, 11 to 18 and 21 to 29

The Examiner has stated that claims 1 to 8, 11 to 18 and 21 to 29 are unpatentable under 35 U.S.C. 103(a) over McAllister et al. (U.S. Patent Publication No. 2001/0010681) in view of Shoaib et al. (U.S. Patent No. 7,161,914).

Missing Elements

The Examiner alleges that McAllister et al. discloses "selecting a route via the network for packets from the terminal in dependence upon the network information and information dependent upon wireless communications between the terminal and at least one of the nodes; and supplying packets with information relating to the selected route", but concedes that McAllister et al. is silent on the "communications" being wireless and the limitation of "receiving, via a respective wireless link from at least one of a plurality of wireless access nodes forming a network, network information relating to links between the nodes". The Examiner alleges that Shoaib et al. discloses wireless communications and a receiving step equal to that which is recited in the present application.

Applicant submits that McAllister et al. does not teach all the limitations of claim 1, in particular "in the terminal...selecting a route via the network for packets from the terminal in dependence upon the network information and information dependent upon wireless communications between the terminal and at least one of the nodes; and supplying packets with information relating to the selected route".

A fundamental difference between what is disclosed in McAllister et al. and what is recited in claim 1 of the present application is that McAllister et al. is directed to making rerouting decisions for a call that is sent by a user in nodes that form a routing path for the call and claim 1 of the present invention is directed to selecting packet routing in a terminal that initially sends packets along a routing path, in which the routing path may include one or more nodes. Otherwise stated, claim 1 of the present application is directed to selecting a routing path in a terminal before the packets even reach the nodes of the routing path, such that the nodes do not make rerouting decisions. Clearly, this is contrary to the concept of the nodes making rerouting decisions, as disclosed in McAllister et al.

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The description of the present application makes a clear distinction as to where the method of claim 1 is performed at page 14, lines 19-25:

"The route selection of Fig. 2 is performed in the terminal 12 rather than in the network of nodes A to F and R. This enables the alternative last hop link between the terminal 12 and the node D to be taken into account, and enables the better alternative route to be selected as shown in Fig. 2, whereas this is not possible or not practical in the route selection performed by the node A in the case of Fig. 1". (emphasis added)

Conversely, McAllister et al. discloses in the abstract :

"A method ... for establishing a switched virtual circuit in a digital network having network nodes with static routing tables. The static routing tables contain at least primary and alternate routing data. When a node is unable to forward a call over its outgoing primary route due to congestion or physical failure and its alternate route is the same as the route on which a call setup request arrived, it clears the call at that node and sends a crankback message to the preceding node, which responds to the crankback message to attempt to dynamically re-route the call over the alternate route stored in the routing table of the preceding node" (emphasis added)

As McAllister et al. does not teach selecting a routing path in the terminal, Applicant respectfully submits that McAllister et al. does not teach all the limitations of claim 1 that the Examiner alleges are taught by McAllister et al.

Applicant submits that Shoaib et al. does not disclose the limitations alleged to be taught by McAllister et al.

For at least the reasons discussed above, Applicant respectfully submits that McAllister et al. and Shoaib et al., when taken alone or in combination, do not teach all the limitations recited in claim 1, as alleged by the Examiner. Without all the limitations of claim 1 being

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disclosed by the two references, either alone or in combination, it is not reasonable to expect to arrive at the invention in the manner claimed.

Reason to Combine

Once the scope of the prior art is ascertained, the content of the prior art must be properly combined. An obviousness inquiry requires review of a number of factors, including the background knowledge possessed by a person having ordinary skill in the art, to determine whether there was an apparent reason to combine the elements of the prior art in the fashion claimed by the present invention. For the Patent Office to combine references in support of an obviousness rejection, the Patent Office must identify a reason why a person of ordinary skill in the art would have combined the references *KSR Int'l v. Teleflex, Inc., No. 04-1350, slip op. at 14 (U.S., Apr. 30, 2007)*, Id. at 15. Even if the Patent Office is able to articulate and support a suggestion to combine the references, it is impermissible to pick and choose elements from the prior art while using the application as a template. *In re Fine*, 837 F.3d 1071 (Fed. Cir. 1988).

The Examiner alleges that the purpose of combining the system of McAllister et al. by incorporating the algorithm in a connection oriented wireless network as shown by Shoaib et al. would be "to benefit the system by informing the mobile of the current network information/available bandwidth, that the mobile needs to make its routing decision." Applicant submits that what is intended in McAllister et al. is not making a routing decision at the terminal, but instead is making a routing decision at a node along the route. A node that is unable to forward a call over its outgoing primary route due to congestion or physical failure makes the decision to reroute the call. However, if the node cannot make the decision to reroute the call in a forward direction toward the destination, it sends a crankback message back along the route to allow a proceeding node to make a decision to reroute the call. Applicant submits that one skilled in the art would not combine McAllister et al. and Shoaib et al. in the manner suggested by the Examiner, as McAllister et al. discloses a system that avoids the terminal having to make the routing decision. As such, Applicant submits that McAllister et al. teaches away from what is disclosed and claimed in the present application.

As McAllister et al. teaches away from the subject matter claimed in the present application, Applicant submits that there is no suggestion of a desirability of the claimed

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invention in the references that would serve as a reason for one skilled in the art to combine the references, as required by the Supreme Court's recent decision in *KSR*.

It is respectfully submitted that the 35 U.S.C. §103(a) rejection is deficient for its failure to comply with the U.S. Supreme Court's requirements recently articulated in *KSR*.

For at least the reasons discussed above, Applicant submits that claim 1 patentably distinguishes over the cited references of McAllister et al. and Shoaib et al., either alone or in combination. It is respectfully requested that the Examiner reconsider and withdraw the obviousness rejection to claim 1.

Claims 14 and 24 are additional independent method claims that recite respective methods which are performed in the terminal. Claim 27 is an independent claim directed to a method of "routing packets from a wireless communication terminal via nodes of a network" wherein the steps are controlled by the wireless communication terminal. Claim 28 is an independent claim directed to a method of communication in a wireless access node of a network wherein the node receives packets including routing information selected by the wireless communication terminal. As claims 14, 24, 27 and 28 all pertain to a wireless terminal operating in a similar fashion to claim 1, Applicant submits that claims 14, 24, 27 and 28 patentably distinguish over McAllister et al. and Shoaib et al., when taken alone or in combination.

Claims 2 to 8, 11 to 13, 21 and 22 are dependent, either directly or indirectly, on claim 1. Claims 15 to 18 and 23 are dependent, either directly or indirectly, on claim 14. Claims 25 to 26 are dependent, either directly or indirectly, on claim 24. Claim 29 is dependent on claim 28. For at least the reason of their dependence on claims 1, 14, 24 and 28, Applicant submits that dependent claims 2 to 8, 11 to 13, 15 to 18, 21 to 23, 25, 26 and 29 patentably distinguish over the combination of McAllister et al. and Shoaib et al. It is respectfully requested that the Examiner reconsider and withdraw the obviousness rejection to the identified dependent claims.

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Claims 9, 10, 19 and 20

Claims 9, 10, 19 and 20 have been rejected under 35 U.S.C. 103(a) as being unpatentable over McAllister et al. and Shoaib et al. and in view of various other references. To begin, claims 9 and 10 depend indirectly on claim 1 and claims 19 and 20 depend directly on claim 14. In view of Applicant's submission regarding the 35 U.S.C. 103 rejection of claim 1 and 14, dependent claims 9, 10, 19 and 20 should also be patentable.


In view of the above discussion, the Examiner is respectfully requested to withdraw the 35 U.S.C. 103 rejections of the claims 9, 10, 19 and 20.

In view of the foregoing, early favorable consideration of this application is earnestly solicited.

Respectfully submitted,

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By


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Dated: September 11, 2007

RAB:MSS:mcg

10/602,088
Routing Quality-of-Service Traffic in a Wireless System
Annotated Sheet Showing Changes

1/2

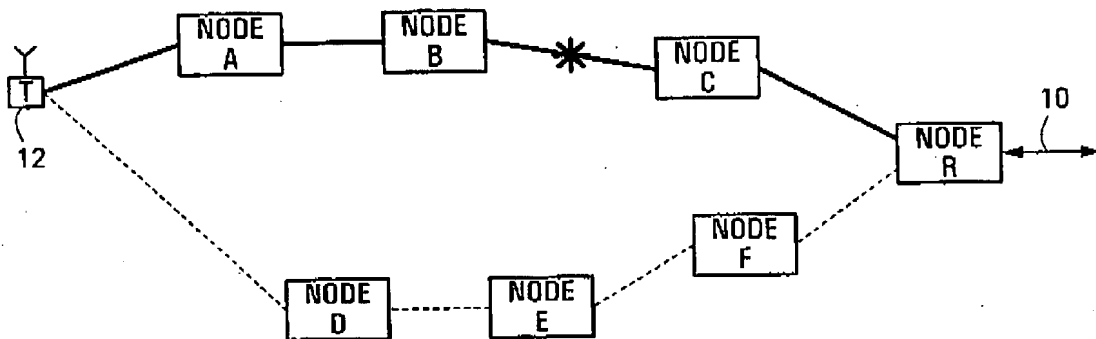


FIG. 1
(Prior Art)

added

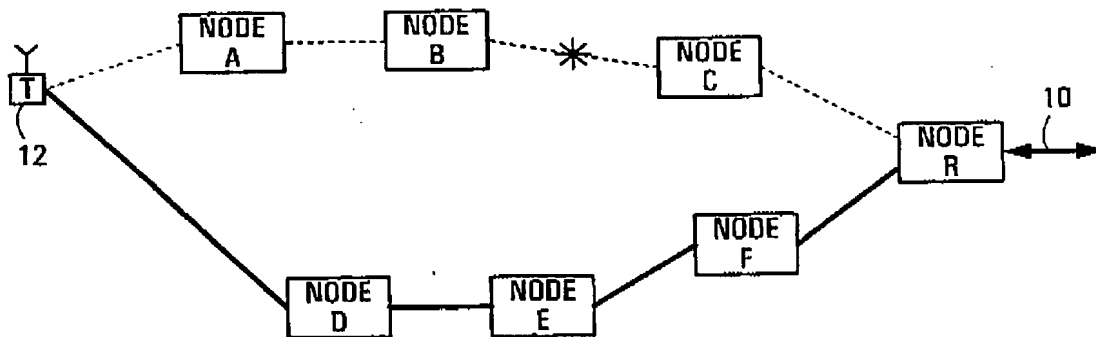


FIG. 2